1039

1. INSURANCE CONTRACT—INDIVIDUAL WHO PROPOSES TO ISSUE SAME OR CONTRACT SUBSTANTIALLY AMOUNTING TO INSURANCE, SUBJECT TO PROVISIONS OF SECTION 665 G. C.

2. CONTRACT WHEREIN IT IS PROVIDED TO FURNISH TO A DOG OR CAT OWNED BY PARTY TO CONTRACT, VETERINARY SERVICES, HOSPITALIZATION AND TREATMENT IN CASE OF ACCIDENT OR ILLNESS, OBSTETRICAL CARE, DENTAL CARE, ETC., CONTRACT OF INSURANCE—SUBJECT TO INSURANCE REGULATORY STATUTES OF THIS STATE.

SYLLABUS:

1. An individual who proposes to issue an insurance contract or a contract substantially amounting to insurance, is subject to the provisions of Section 665, General Code.

2. A proposed contract wherein it is provided that certain veterinary services such as hospitalization and treatment in case of accident or illness, obstetrical care, dental care, etc., will be furnished to a dog or cat owned by a person who becomes a party to the contract, is a contract of insurance within the meaning of Section 665, General Code, and would, therefore, be subject to the insurance regulatory statutes of this state.

Columbus, Ohio, June 24, 1946

Hon. Walter Dressel, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A veterinary has submitted to this office a copy of a contract which he proposes to issue in Ohio for medical care and hospitalization of dogs and cats.

We quote the contract as follows:

'DR. ....'S HOSPITAL SERVICE CONTRACT FOR DOGS AND CATS

This Hospital Service Contract for individual dogs and cats is in force for a period of twelve (12) months. Terms of this Hospital Service Contract are that the owner of a dog or cat who applies for this Service Contract does so with the agreement that he or she will take this Hospital Service Contract for a period of twelve (12) months in the amount of twelve dollars ($12.00), and are entitled to the following services which is covered by this contract for this period.

1. Complete hospitalization and treatment when the animal is ill.
2. Examination for worms four (4) times annually or when the animal is infested with parasities.
3. Worming of animal when the animal is positive for worms.
4. Complete physical examination four (4) times annually, or whenever the owner feels the animal is in need of an examination. (This includes treatment and medicine).
5. Dental examination and extraction of teeth if indicated.
6. Any accident case. (This includes the treatment and setting of bone fractures. Blood transfusions if indicated).
7. Ultra Violet Ray treatments.
8. X-ray treatments.
9. Nail trims as often as is necessary.
10. Obstetrical care and hospitalization. (This does not include Caesarian section surgery).
11. All minor surgery.

12. Fluoroscopic examination.
13. Urinalysis.
14. Blood analysis.
15. Eye examination and treatments.
16. Ear examination and treatments.
17. Examination and treatment of skin diseases.
18. Examination and treatment of Distemper.

The hospitalization of an animal will be governed by the recommendation of the Veterinarian conducting the examination on the individual animal. The duration of such hospitalization shall not exceed a period of fourteen (14) days, unless the condition of the animal is such that further hospitalization is necessary, and such further hospitalization shall be governed by the condition of the animal and the opinion of the Veterinarian in attendance.

The following services are not covered by this contract.

1. Ovariectomies (Spays).
2. Caesarian sections.
3. Laparotomies (Abdominal surgery).
4. Vaccinations.
5. The use of any biologics, narcotics or serums administered either by way of mouth or hypodermically (Injection).
6. Bathing, boarding, clipping or plucking.
7. X-rays.
8. Major surgical operations.
9. Castrations.
10. General anesthesia.
11. Euthanasia (Destroying the animal).
12. Hospitalization of any animal if affected with a contagious or infectious disease.'

We would appreciate receiving your opinion as to whether the proposed contract is one substantially amounting to insurance so that the issuer thereof would have to comply with the insurance laws of the State of Ohio as required by Section 665, of the General Code of Ohio."

It is well settled in this state that the business of insurance is impressed with a public interest and consequently it is regulated by statute in great detail to protect the general public. State, ex rel. Herbert, Attorney General v. The Standard Oil Co., 138 O. S. 376; State, ex rel. Duffy, Attorney General v. Western Auto Supply Co., 134 O. S. 163. The right to transact the business of insurance is no longer a private right but a franchise. Robbins v. Hennessey, et al., 86 O. S. 181; State, ex rel. v. Ackerman, 51 O. S. 163. The state has the authority to grant or withhold a franchise. This authority with respect to the business of insurance has been asserted by the legislature of our state in Section 665, General Code, which provides in part as follows:

> "No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing against liability, loss or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with."

The foregoing section applies to individuals who are carrying on the business of insurance as well as to companies, corporations and associations so engaged. This will be seen when Section 665, General Code, is read in connection with Section 670, General Code, which provides as follows:

> "The provisions herein relating to the superintendent of insurance shall apply to all persons, companies and associations, whether incorporated or not, engaged in the business of insurance."

Section 670, General Code, and that portion of Section 665, General Code, which I have quoted in this opinion were a part of the same section in the Revised Statutes (Section 289), and were contained in Section 25 of the act which established the Division of Insurance (69 O. L. 32). This section reads as follows:

> "The provisions of this act, shall apply to individuals and parties, and to all companies and associations, whether incorporated or not, now or hereafter engaged in the business of insurance. It shall be unlawful for any company, corporation or association, whether organized in this state or elsewhere,

> either directly or indirectly, to engage in the business of insurance, or to enter into contracts substantially amounting to insurance, or in any manner to aid therein, in this state, without first having complied with all the provisions of this act."

Consequently, Section 670, General Code, which is broad enough to include individuals, should be read in connection with Section 665, General Code. A similar view was expressed by one of my predecessors in an opinion reported in 1936 Opinions of the Attorney General, page 1192.

The Supreme Court of Ohio in Renschler v. State, ex rel., 90 O. S. 363, had before it Sections 665 and 670, General Code. In so far as is pertinent to this opinion, these sections then read as they do today. In that case the court held that an individual who engages in the business of insurance is bound by all the restrictions and requirements applicable to an incorporated company. "To hold otherwise", the court said in its opinion, "would work a far-reaching hardship on that part of our population most needful of the protection of the state and lead to a recrudescence of the old wildcat insurance days, now happily a thing of the past."

It is clear then that even as an individual the veterinarian must comply with the provisions of Section 665, General Code, if the contract set out in your request for my opinion which he proposes to issue is an insurance contract or a contract substantially amounting to insurance. The problem is to determine whether or not the contract styled "Dr.....'s Hospital Service Contract for Dogs and Cats" is a contract of insurance or a contract substantially amounting to insurance. To make this determination I must look beyond the terminology of the contract to its purpose, effect and import. 44 C. J. S., Insurance, Paragraph 59.

The contract provides that in consideration of the payment of twelve dollars, a veterinarian agrees to render certain services for a period of twelve months. The contract is not drawn in precise language which would enable me to relate with definiteness just what the veterinarian is obligated to do under its terms, but I do not feel that this is necessary in view of the fact that it is clear that for the most part any duty to act on the part of the veterinarian arises only upon the happening of a contingency, the illness of the animal which is the subject of the contract. Certain services which are clearly unrelated to the happening of a contingency, such as bathing, boarding, clipping and plucking of the animal are

excepted by the words of the contract. The fact that the value of the services which the veterinarian agrees to perform on the happening of the contingency is entirely out of proportion to the consideration which is to be paid by the owner of the animal indicates to me that the principal object of the contract is indemnification against medical costs which might arise upon the happening of a contingency rather than the unique services of the veterinarian. Undoubtedly the veterinarian by means of an indiscriminate solicitation of the public at large intends to acquire a sum of money which will leave him a profit after it is reduced in an amount sufficient to reimburse him for the actual expenses he must incur in fulfilling his obligations that may arise from the many contracts. The plan is designed to distribute among many persons the costs of veterinary services which will be required by only a few. Its real purpose and effect is not to obtain the personal services of a veterinarian but to distribute among a group the risk of loss occuring upon the happening of a contingency.

The term "insurance" has not been defined by the legislature of our state. It has, however, been defined by the Supreme Court. State, ex rel. v. The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co., 68 O. S. 9; The Ohio Farmers Insurance Co. v. Cochran, 104 O. S. 427; State, ex rel. v. Laylin, 73 O. S. 90; State, ex rel. v. Western Auto Supply Co., 134 O. S. 163; State, ex rel. v. The Standard Oil Co., 138 O. S. 376.

In the case of State, ex rel. v. Western Auto Supply Co., 134 O. S. 163, at page 168, it is said:

> "* * * 'Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency. As regards property and liability insurance, it is a contract by which one party promises on a consideration to compensate or reimburse the other if he shall suffer loss from a specified cause, or to guarantee or indemnify or secure him against loss from that cause.'"

In said opinion at page 169 appears the following statement:

> "It seems well settled that to constitute insurance the promise need not be one for the payment of money, but may be its equivalent or some act of value to the insured upon the injury or destruction of the specified property."

The contract about which you are concerned falls squarely within the terms of this definition. The veterinarian on the payment of a consideration promises to render an act of value, which will hold harmless against loss the party who pays the consideration, on the happening of a specified contingency—the illness of a certain animal, the property of the second party. The owner of a dog or a cat by virtue of his ownership is subject to the risk of providing veterinary care for his animal if that animal becomes ill. Under the contract in question this risk is assumed by the veterinarian.

In Vance on Insurance (second edition, 1930) at page 2, the five elements which distinguish insurance from other contracts are stated as follows:

> "(a) The insured possesses an interest of some kind susceptible of pecuniary estimation, known as an insurable interest.
>
> (b) The insured is subject to a risk of loss through the destruction or impairment of that interest by the happening of designated perils.
>
> (c) The insurer assumes that risk of loss.
>
> (d) Such assumption is part of a general scheme to distribute actual losses among a large group of persons bearing similar risks.
>
> (e) As consideration for the insurer's promise, the insured makes a ratable contribution to a general insurance fund, called a premium."

These elements are present in the contract with which you are concerned. The fact that the owner of a dog or cat is the owner of the animal and that the illness of the animal might directly damnify the owner satisfies the basic theory of public policy which condemns wagers and requires an insurable interest. Vance, op. cit., p. 118. It can not be questioned that the owner of an animal is subject to a risk of loss which would occur upon the illness of his animal. This risk is assumed by the veterinarian under what obviously is a general scheme to distribute actual losses among many owners of dogs and cats. The price paid for this assumption is a premium in that it is a contribution to a general fund from which the amount of actual loss of all contributors will be paid.

A contract which possesses all five of these elements is a contract of insurance whatever be its name or form. Vance, op. cit., p. 2. Since this contract is a contract of insurance under both definitions which I have considered, it is my opinion, in specific answer to your inquiry, that the person who proposes to issue the contract must comply with the insurance laws of the state of Ohio as required by Section 665 of the General Code of Ohio.

Respectfully,

HUGH S. JENKINS
Attorney General